

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1366 of 2026

(In the matter of an application under Section 482 of the Code of Criminal Procedure corresponding to Section 528 of the BharatiyaNagarik Surakshya Sanhita (BNSS), 2023)

Biswa Mohan Mohanty *Petitioner(s)*

-versus-

State of Odisha *Opposite Party (s)*

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. Gopal Kumar Agarwal, Senior Adv*
Along with
M/s. Suryanshi Srivastava, Adv.
P. Tejasman, Adv. N. Agarwal, Adv.

For Opposite Party(s) : *Ms. Gayatri Patra, ASC*

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-04.05.2026

DATE OF JUDGMENT:-14.07.2026

Dr. SanjeebK Panigrahi, J.

1. The present CRLMC has been filed by the Petitioner, against whom allegations of cheating have been levelled, assailing the order dated 02.09.2025 passed by the learned S.D.J.M., Malkangiri in G.R. Case No.336 of 2017 arising out of Malkangiri P.S. Case No.110 of 2017 (Annexure-3). By the said order, the learned S.D.J.M. rejected the Petitioner's application seeking issuance of a No Objection Certificate (NOC) to enable him to renew his passport.



I. FACTUAL MATRIX OF THE CASE:

2. The brief fact of the case, in nutshell, is that originally the case arises out of the complaint petition filed by the complainant named Bhanu Dora, W/o.-Late Chamara Dora of Village Korukonda, P.S/ District-Malkangiri against 12 numbers of accused persons including the present Petitioner for the commission of offence punishable under Sections 209/210/420/468/471/34 of I.P.C. The allegation made in the said complaint is that the accused persons so also the present Petitioner giving false document and adducing false evidence before the Court of learned Civil Court (Sr.Divn.), Malkangiri, obtained a decree. Thereafter, they also executed that decree in their favour which is not only due to them but is also punishable under Section 209 of the IPC. The accused persons with an intention to dispossess the complainant from her property did the same clandestinely.
3. Soon after knowing the said fact the complainant filed an objection petition along with a petition for stay of execution of the decree before the Court of learned Civil Judge (Sr. Divn.), Malkangiri. Thereafter, on hearing the said interim application at the instance of the complainant the learned Court below passed an interim order thereby staying the decree. The learned Court below had also given a direction to the Tahasildar, Malkangiri for its non-execution.
4. Later on, a criminal case was also filed by the complainant. In the said criminal case, it was also alleged therein that the accused persons by giving false statement have obtained a decree pertaining to the disputed property in question, which originally belongs to the husband of the



complainant and her other coparceners and the said accused persons deceitfully partitioned that landed property in their favour. Based on the said complaint petition the learned Court in *seisin* over the matter sent the said complaint petition to the Police as per provision contained under Section 156(3) of the Cr.P.C for conducting investigation.

5. Upon investigation the I.O. submitted charge sheet. Accordingly, cognizance was taken and later on, in the year 2022, the present Petitioner had challenged the said order of cognizance before the Court of learned District and Sessions Judge, Malkangiri. In the year 2025, the said petition was dismissed and the order of cognizance is still in force. On receiving the said case record, the learned Court in *seisin* over the matter issued notice to all the accused persons including the present Petitioner. Accordingly, on 17.06.2024, the present Petitioner/ Biswa Mohan Mohanty appeared before the learned Court in *seisin* over the matter and was released on bail. As this case is in nascent stage, none of the witnesses from the prosecution side has been examined till today and the allegations averred in the complaint petition by the complainant is still in force. So, the provision under Section 6(2)(f) of the Passport Act, 1967 which in categorical terms, mandated the Passport Authority to refuse the issuance of a passport or travel document for visiting any foreign court under clause (C)(2) of Section 5 on the ground that the proceeding in respect of an offence alleged to have been committed by the applicant were pending before a criminal Court in India.



6. The Court has interpreted the word “Shall” used in Section 6(2) of the Passport Act, 1967 indicated the mandatory or binding nature of the provision leaving no room for discretion. Section 6(2)(f) is seen as a reasonable restriction imposed by law within the framework of Article 19(f) of the Constitution of India which debars issuance of passport where proceeding in respect of offence alleged to have been committed by the applicant pending before a criminal Court in India.
7. Based on the above noted provisions and allegations levelled against the present petitioner, the learned Court in *seisin* over the matter declined to allow the petition for renewal / re-issuance of the passport in favour of the present Petitioner. Accordingly, the learned Court in *seisin* over the matter vide impugned order dated 02.09.2025 rejected the said petition at the instance of the present Petitioner. Hence, the present CRLMC.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

8. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions, as borne out from the Written Note of Submissions:
 - i) Learned counsel for the Petitioner submits that the Petitioner had filed a Writ Petition vide W.P.(C) No.37698 of 2023 with a prayer to direct the Regional Passport Officer, Bhubaneswar, Odisha for processing his application and issuance of passport in his favour. On hearing both the sides, this Court vide order dated 30.07.2024 disposed of the said Writ Petition with a



direction that if the Petitioner makes an application before the Court of learned S.D.J.M, Malkangiri for getting NOC for issuance of passport in his favour, the same shall be considered and disposed of in accordance with law.

- ii) Pursuant to the said order dated 30.07.2024 the Petitioner moved an application before the learned Court in *seisin* over the matter for granting necessary NOC as per the notification vide GSR 570(E) of the Government. As per the said notification, in case of pendency of a criminal case the Petitioner has to obtain NOC from the concerned Court for issuance of passport or renewal.
- iii) Learned counsel for the Petitioner contended that the learned court in *seisin* of the matter, without due consideration of the grounds submitted by the Petitioner, rejected his application seeking issuance of a No Objection Certificate (NOC) for renewal of his passport by the impugned order dated 02.09.2025. It was further submitted that the learned court below failed to appreciate that the mere pendency of a criminal case is not, by itself, a bar to the issuance or renewal of a passport. He further submitted that, while granting bail to the Petitioner vide order dated 17.06.2025, the learned court below neither directed surrender of the Petitioner's passport nor imposed any condition requiring prior permission of the court for travelling abroad. It was, therefore, contended that the impugned order is



unsustainable in law, and accordingly, prayer was made for allowing the present CRLMC.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY:

9. On the contrary, the Learned Counsel for the Opposite Party made the following submissions:

- i) In opposition, learned counsel appearing for the Opposite Party submitted that several criminal cases are pending against the Petitioner, Biswa Mohan Mohanty, before different courts and are yet to be adjudicated. It was contended that no final verdict has been rendered in any of those cases, including the present one.
- ii) Learned counsel further submitted that, in the instant case, out of the eleven accused persons, only the Petitioner has appeared before the learned court below and has been enlarged on bail. The case is presently awaiting the appearance of the remaining accused persons and is pending for further orders. In such circumstances, it was submitted that the proceedings are still at a preliminary stage and that the relief sought by the Petitioner ought not to be granted.
- iii) Learned counsel further submitted that the case is presently at a nascent stage, with the investigation still in progress. It was argued that renewal or re-issuance of the Petitioner's passport at this juncture may impede the effective conduct of the investigation and may also diminish the Petitioner's availability for investigative and legal processes. He, therefore, urged that the prayer for renewal or re-issuance of the passport be declined.



IV. THIS COURT'S REASONING AND ANALYSIS:

10. This Court has heard the rival contentions advanced by the learned counsel for the parties at length and has considered on the materials placed on record, including the impugned order dated 02.09.2025 passed by the learned S.D.J.M., Malkangiri vide Annexure-3, the order of this Court dated 30.07.2024 passed in W.P.(C) No.37698 of 2023, and the case diary pertaining to G.R. Case No.336/2017.
11. The moot question that falls for determination before this Court is a narrow but significant one that is whether the mere pendency of a criminal case, without anything further, ipso facto disentitles an accused from being granted permission/No Objection Certificate for renewal of his passport under Section 6(2)(f) of the Passports Act, 1967 read with Notification No. GSR 570(E) dated 25.08.1993 and, correspondingly, whether the impugned order, which proceeds solely on the ground of such pendency can be said to reflect a considered and judicious exercise of discretion by the Court below or whether it amounts to a mechanical and non-speaking refusal that cannot be sustained in the eye of law.
12. Before advertng to the rival submissions, it would be apposite to notice the statutory architecture within which the present controversy is situated. Section 6(2)(f) of the Passports Act, 1967 casts an obligation on the Passport Authority to refuse issuance of a passport where proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal Court in India. This



provision, however, does not operate in a vacuum. The Central Government, being conscious of the fact that an unqualified embargo of this nature would work undue hardship upon persons merely facing trial, and would be difficult to reconcile with the guarantee of personal liberty under Article 21 of the Constitution, issued Notification No. GSR 570(E) carving out a mechanism whereby the Passport Authority may issue a passport, notwithstanding pendency of a criminal case, if the Court concerned having jurisdiction over the case grants permission to the applicant to depart from India. The object underlying Section 6(2)(f), therefore, is not punitive but custodial in nature and it is intended to ensure that the accused remains amenable to the jurisdiction of the criminal Court and does not use the passport as a device to evade trial. It was never intended to operate as an additional and independent punishment superimposed upon a person who is, in the eye of law, still presumed innocent.

13. It is well settled that the right to travel abroad is an integral facet of "personal liberty" within the meaning of Article 21 of the Constitution, and any restriction thereon must answer the test of being fair, just and reasonable, and not fanciful, oppressive or arbitrary. Consequently, the discretion conferred upon a criminal Court while considering an application for grant of permission/NOC under the aforesaid Notification is not an unguided or unfettered one; it is a jurisdiction coupled with a duty to balance two competing interests, namely, the legitimate concern of the State and the prosecution to secure the



presence of the accused for a fair and effective trial, on the one hand, and the fundamental right of the accused to travel abroad and pursue his lawful vocation, on the other. Neither interest is absolute, and the exercise of discretion cannot be allowed to degenerate into a rule of automatic refusal merely because a criminal case happens to be pending.

14. This position finds resonance in the consistent line of judicial pronouncements on the subject, which draw a clear distinction between mere pendency of a criminal trial and a final adjudication of guilt. Courts have repeatedly clarified that Section 6(2)(f) does not contemplate an absolute or automatic embargo on issuance or renewal of a passport solely on account of pendency of criminal proceedings; the bar is not attracted at the stage of investigation, and even at the stage of trial, the underlying Notification does not require the concerned Court to grant, in every case, a blanket prior permission before it can be said that the accused is entitled to travel and it obliges the Court to apply its mind to the facts of the given case. What the law disapproves of is the treatment of Section 6(2)(f) as a rigid, one-size-fits-all threshold bar, divorced from the nature of the offence, the stage of the proceedings, and the conduct of the accused during the pendency of trial.
15. Tested on this touchstone, the impugned order does not withstand scrutiny. A perusal of the order dated 02.09.2025 discloses that the learned Court below has done little beyond reproducing the text of Section 6(2)(f) and noting the fact of pendency of G.R. Case



No.336/2017. There is no discernible application of judicial mind to factors that ought ordinarily to weigh with a Court while considering such an application, namely, (i) the nature and gravity of the offence alleged; (ii) the stage at which the proceeding stands; (iii) whether the accused has, at any point, evinced an intention to abscond or evade the process of the Court; (iv) the conduct of the accused during the pendency of the case; and (v) whether the ends of justice would be equally well served by imposition of suitable safeguards short of an outright refusal. An order that forecloses a valuable right without engaging with these considerations, and without recording reasons demonstrating why the lesser alternative of conditional permission was found unworkable, is reduced to a non-speaking order, which is impermissible, more so when it touches upon a facet of personal liberty.

16. The facts on record, when juxtaposed against this legal position, only reinforce the above conclusion. The offence alleged against the Petitioner arises out of a property dispute of a civil complexion, said to have culminated in a decree obtained before the Civil Court, and the criminal complaint under Sections 209/210/420/468/471/34 of the I.P.C. is, in substance, an offshoot of that underlying civil lis. The proceeding is admittedly at a nascent stage wherein cognizance having been taken but not a single witness examined till date. Out of eleven accused persons, only the present Petitioner has, till date, appeared and been enlarged on bail; significantly, the order granting him bail did not impose any condition requiring him to surrender his



passport or to seek leave of the Court prior to travel. This circumstance is telling, for it shows that even the Court which granted bail did not, at that stage, perceive the Petitioner to be a flight risk warranting curtailment of his movement. It would, therefore, be incongruous for the same Petitioner to be denied an NOC for passport renewal on an undifferentiated apprehension that finds no corresponding reflection in the terms of his bail.

17. This Court is not oblivious to the legitimate apprehension voiced by the learned counsel for the Opposite Party that the case is at a nascent stage and that several co-accused are yet to appear before the Court below. That, however, is a consideration which can be adequately addressed by calibrated conditions rather than a blanket denial. The learned Court below, while examining such an application, is not confined to a binary choice of "grant" or "refuse"; it is equally open to it to grant permission subject to safeguards like furnishing an undertaking to appear before the Court on all dates fixed, intimating the Court of the travel itinerary and duration in advance, furnishing adequate surety, or limiting the validity/purpose of travel thereby reconciling the Petitioner's right to travel with the imperative of securing his presence for trial. The failure of the Court below to even advert to this via media, and its resort instead to a straightforward, undifferentiated refusal, betrays a mechanical application of Section 6(2)(f), rather than the balanced, fact-sensitive exercise of discretion that the provision, read with the enabling Notification, contemplates.



18. It is also relevant to observe that the Petitioner did not approach the Passport Authority directly in defiance of the statutory scheme; he approached this Court by way of W.P.(C) No.37698 of 2023, pursuant to which he was directed to seek the appropriate permission from the Court below in seisin of the criminal case. Having thus followed the due procedure contemplated in law, the Petitioner cannot be non-suited merely on the ground that the proceeding against him is pending, without the Court below first examining whether the grant of conditional permission would sufficiently safeguard the interest of the prosecution.

V. CONCLUSION:

19. For the aforesaid reasons, this Court is of the considered view that the impugned order dated 02.09.2025 passed by the learned S.D.J.M., Malkangiri, being unreasoned, mechanical, and reflective of a non-application of mind to the relevant factors germane to the grant or refusal of permission under Section 6(2)(f) of the Passports Act, 1967 read with Notification No.GSR 570(E) dated 25.08.1993, cannot be sustained in the eye of law and is liable to be set aside. Accordingly, the present petition is **allowed**.

20. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge